

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Dane Buchanan	Team: Team # 5	CCRB Case #: 201010420	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/11/2010 10:37 PM	Location of Incident: Pennsylvania Avenue and Cozine Avenue	18 Mo. SOL 1/11/2012	Precinct: 75
Date/Time CV Reported Mon, 07/12/2010 12:01 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/30/2010 1:00 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Napolitano	29370	940682	075 PCT
2. POM Craig Smith	00724	946617	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Menze	05241	916211	075 PCT
2. SGT Anthony Bagarozza	00463	934441	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Craig Smith	Abuse: PO Craig Smith stopped § 87(2)(b)	
B . POM Thomas Napolitano	Force: PO Thomas Napolitano used physical force against § 87(2)(b)	

Case Summary

On July 12, 2010, Sergeant Anthony Bagarozza of the 69th Precinct called the IAB Command Center to file a report in regards to this incident (encl. 16 – 18). This case was received by the CCRB under IAB log 10-37897 on July 30, 2010 (encl. 19 – 22).

On July 11, 2010, at approximately 10:37 p.m., § 87(2)(b) was arrested by PO Thomas Napolitano of the 75th Precinct at Pennsylvania and Cozine Avenue in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Craig Smith stopped** § 87(2)(b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation B – Force: PO Thomas Napolitano used physical force against** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Although this case was received by the CCRB on July 30, 2010, it is being closed after the statute of limitations has passed because § 87(2)(b)'s lawyer did not allow him to provide a sworn statement to the CCRB until October 2, 2012. Additionally, after October 29, 2012 the CCRB was operating on a limited basis due to Hurricane Sandy and there was no CTS access until December 24, 2012. The statute of limitations applicable to this case expired on January 11, 2012. § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)
§ 87(2)(b) is a black male who was § 87(2)(b) old at the time of the incident. He is 5'8" tall, weighs 180 pounds, and has black hair and brown eyes. § 87(2)(b)

Notice of Claim

§ 87(2)(b) filed a Notice of Claim against the City of New York on July 28, 2010 (encl. 23 – 25). The statements contained therein were consistent with his CCRB testimony, except where noted below.

IAB Testimony

§ 87(2)(b) provided a statement to IAB on November 10, 2010 at the Kings County Rackets Bureau, located at 350 Jay Street in Brooklyn (encl. 26 – 27). This statement was consistent with his CCRB testimony, except where noted below.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on October 2, 2012 in the presence of his civil attorney, § 87(2)(b) (encl. 28 – 32).

On July 11, 2010, at approximately 4:30 p.m., § 87(2)(b) went to a get-together at the Canarsie Pier in Brooklyn with several of his friends. § 87(2)(b) was wearing dark blue jeans and a brown shirt. He could not remember if he was wearing a hat. At the time of his CCRB interview, he could only identify § 87(2)(b) “§ 87(2)(b) aka § 87(2)(b) and § 87(2)(b) as being at the Canarsie Pier with him. During his IAB statement, he also identified § 87(2)(b),” “§ 87(2)(b) aka § 87(2)(b) “§ 87(2)(b) aka § 87(2)(b),” § 87(2)(b) and “§ 87(2)(b) as being among at least 200 people at Canarsie Pier. At approximately 9 or 9:30 p.m., the crowd was told, by guards or NYPD officers, that they had to leave.

§ 87(2)(b) started leaving the Pier, along with § 87(2)(b) and § 87(2)(b) and most of the crowd. § 87(2)(b) and the crowd walked up Rockaway Parkway towards Flatlands Avenue. While walking, § 87(2)(b) was alone approximately 20 steps ahead of the rest of the people. There were two unmarked four-door sedans driving alongside the crowd. In his statement to IAB, § 87(2)(b) indicated that three marked RMPs were following the crowd. § 87(2)(b) did not see any arguments in the crowd and just heard them laughing.

When § 87(2)(b) got to the intersection of Flatlands Avenue and Rockaway Parkway, he waited at the corner for the rest of his friends to get to him so he could say goodbye to anyone who was going in a different direction. After the crowd arrived and § 87(2)(b) said goodbye to his friends who were leaving, § 87(2)(b) and § 87(2)(b) as well as other people who lived in Starrett City, continued down Flatlands Avenue towards Pennsylvania Avenue. § 87(2)(b) could not remember if the two unmarked vehicles were still following the crowd while he was at the corner or whether there were any marked RMPs nearby.

When § 87(2)(b) began walking towards Pennsylvania Avenue, he again was walking in front of the crowd, which by this point numbered approximately 150 or 175 people. The crowd was walking on the sidewalk and § 87(2)(b) did not notice any disturbances in the crowd. When he got to the Breukelen Houses, which is nearby 103rd Street and Flatlands Avenue, § 87(2)(b) began to walk slower so he could find his friends in the crowd. He and the crowd remained on the sidewalk of Flatlands Avenue and did not go through the Breukelen Houses. § 87(2)(b) met up with § 87(2)(b) who was on his cell phone, at the back of the crowd. § 87(2)(b) decided to walk with § 87(2)(b) since both of them had been walking alone.

§ 87(2)(b) and § 87(2)(b) continued walking on the sidewalk of Flatlands Avenue about 25 to 30 steps behind the rest of the crowd. When they approached the large parking lot for Pathmark, Dunkin Donuts and IHOP, police officers put sirens on and everyone in the crowd started running down Flatlands Avenue towards the Pathmark. A police car on Flatlands Avenue came from behind § 87(2)(b) and he stepped to the side, into the parking lot, as the police car entered the parking lot and chased everyone who was running. § 87(2)(b) could not remember if § 87(2)(b) was with him at this time. He had not seen any police vehicles before the siren sounded, and he did not recall how many police vehicle there were or whether the vehicles were marked. § 87(2)(b) did not know why the sirens came on. He had not heard any gunshots or loud noises and did not see anyone arguing. No officers on foot were chasing the crowd of people.

The next thing § 87(2)(b) remembered was waking up in § 87(2)(b) § 87(2)(b) did not remember if police officers said anything to him, if he ran or how he was injured. § 87(2)(b) suffered headaches, a back injury and he was told he was bleeding from his nose and ears. § 87(2)(b) had to relearn how to walk using a walker and has had short term memory problems since the incident. § 87(2)(b) was initially charged with jay-walking and later for holding up traffic but was found not guilty of all charges.

In his Notice of Claim, § 87(2)(b) alleged that officers following the crowd were yelling “epithets” at § 87(2)(b) and the crowd, causing individuals in the crowd to run. Police officers

then exited their vehicles and yelled, “Stop.” § 87(2)(b) turned around with his hands extended in surrender and an officer charged at § 87(2)(b) striking § 87(2)(b) with his shoulder and upper arm and causing § 87(2)(b) s head to strike the pavement.

Witness: § 87(2)(b)

At the time of the incident, § 87(2)(b) was § 87(2)(b) old § 87(2)(b). He is not related to the victim § 87(2)(g).

IAB Testimony

§ 87(2)(b) provided a written statement to IAB on July 12, 2010 (encl. 43 – 44). He also provided a verbal statement to IAB on the same date (encl. 45 – 47). § 87(2)(g)

On July 11, 2010, § 87(2)(b) § 87(2)(b), made a right turn and prepared to cross the street when he heard a man yell, “Stop, you stop right there.” § 87(2)(b) saw that a police officer in uniform was chasing a civilian, whose t-shirt was off and possibly hanging from his side, across Pennsylvania Avenue. The civilian, identified by the investigation as § 87(2)(b) was about seven steps ahead of the officer, identified by the investigation as PO Thomas Napolitano, and continued running eastbound on the north side of Cozine Avenue towards New Jersey Avenue on the sidewalk. As the civilian, identified by the investigation as § 87(2)(b) approached the Auto Zone, he slowed down his pace and looked slightly over his left shoulder with his hands up by his torso, like he was starting to surrender. § 87(2)(b) did not stop running and did not fully turn around when PO Napolitano raised his elbow and charged in, pushing his shoulder blade up with force as strong as he could like a football charge, at § 87(2)(b) § 87(2)(b) was hit with the full force of PO Napolitano’s right forearm to the right side of § 87(2)(b) s head. There was no warning and § 87(2)(b) s feet came off the ground and he spun around, crashing on the right side of his head. PO Napolitano said, “Don’t move,” but § 87(2)(b) did not budge and was bleeding from his head area. An unidentified white or Hispanic male officer in plainclothes also engaged in the foot pursuit but did not have any contact with § 87(2)(b). Everyone stood around and more police cars came and § 87(2)(b) went out § 87(2)(b). When he got back from § 87(2)(b), about ten or more minutes later, the ambulance appeared to have just arrived at the scene.

Witness: § 87(2)(b)

§ 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a friend of § 87(2)(b).

IAB Testimony

§ 87(2)(b) provided statements to IAB on July 12, 2010 (encl. 33 – 42). On July 11, 2010, § 87(2)(b) was with a group of friends, including § 87(2)(b) at a barbecue in Canarsie Pier when they decided to walk back home. Also walking back were about 200 people who also came from the picnic. The crowd was being followed by two marked RMPs. While walking eastbound on Flatlands Avenue near the Breukelen Houses, they encountered a group of approximately nine males known to § 87(2)(b) as the “§ 87(2)(b).” This other group began to antagonize § 87(2)(b) s group and they engaged in a verbal dispute. One of the “§ 87(2)(b)” pointed a black toy gun and fired 10 shots, causing the crowd to disperse in panic. An unidentified officer chased a “§ 87(2)(b)” while another officer appeared out of nowhere and crossed the street towards § 87(2)(b) with his gun drawn. § 87(2)(b) panicked.

and ran straight up Flatlands Avenue and turned right onto Cozine Avenue. § 87(2)(b) had been walking with § 87(2)(b) along Flatlands Avenue, but he lost sight of him.

Approximately four to eight police officers caught up to § 87(2)(b) and stopped him on Pennsylvania Avenue and Cozine Avenue, across the street from the Auto Zone. After § 87(2)(b) was handcuffed and stood up, he saw § 87(2)(b) sitting down on the sidewalk by the parking lot of the Auto Zone. § 87(2)(b) did not see what transpired between § 87(2)(b) and the police and could not tell if § 87(2)(b) was injured due to the distance.

Witness: § 87(2)(b)

§ 87(2)(b) was § 87(2)(b) old at the time of the incident. He did not know § 87(2)(b) prior to this incident.

IAB Testimony

§ 87(2)(b) provided statements to IAB on July 12, 2010 (encl. 33 – 42). § 87(2)(b) was at the barbecue at Canarsie Pier but left early to return a metrocard to his mother with his friends § 87(2)(b) and § 87(2)(b). He stopped by a Baskin Robbins at Louisiana Avenue and Flatlands Avenue and while there observed an argument between his friends and some residents of the Breukelen Houses. Suddenly, gun shots rang out and § 87(2)(b) and the rest of the crowd in the vicinity took off. § 87(2)(b) ran around the back of Baskin Robbins and was arrested at Louisiana Avenue and Flatlands Avenue. After § 87(2)(b) was placed in a police vehicle, he was brought over to the intersection of Cozine Avenue and Pennsylvania Avenue where he saw a young, stocky male in a white tank top and jeans, who was identified by the investigation as § 87(2)(b) lying face down in handcuffs. § 87(2)(b) appeared to be seriously injured as he was not moving his body or head. He did not see how § 87(2)(b) came to be injured.

Witness: § 87(2)(b)

§ 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a friend of § 87(2)(b)

IAB Testimony

§ 87(2)(b) provided a statement to IAB on July 30, 2010 (encl. 48 – 50). On July 11, 2010, § 87(2)(b) went to a cookout at the Canarsie Pier with several friends, including § 87(2)(b). There were approximately 200 to 250 people at the Pier. The police arrived to shut the cookout down and everyone began to leave. § 87(2)(b) and § 87(2)(b) walked northbound on Rockaway Parkway and then turned eastbound on Flatlands Avenue. They were among a crowd of about 50 people walking on Flatlands Avenue and there were three marked RMPs driving alongside the crowd.

While walking on the south side of Flatlands Avenue, near Williams Avenue, a crowd of people from the Breukelen Houses walking on the north side of Flatlands Avenue began to argue with people in § 87(2)(b)'s crowd, who are from the Starrett City Houses. Some of the Starrett City residents crossed the street to confront the Breukelen residents, and the two groups began cursing and yelling at each other. Neither § 87(2)(b) nor any of his friends crossed the street to argue with the other group. After the Starrett City residents crossed the street, § 87(2)(b) heard three shots from what sounded like a cap gun. § 87(2)(b) and § 87(2)(b) ran through the Pathmark Supermarket's parking lot towards Louisiana Avenue. § 87(2)(b) and § 87(2)(b) stopped and waited on Louisiana Avenue by a church for things to calm down but § 87(2)(b) continued running towards Starrett City.

§ 87(2)(b) eventually went home, where he received a call from an unknown male who informed him that § 87(2)(b) and § 87(2)(b) were fighting police officers. § 87(2)(b) went down to Pennsylvania Avenue and Cozine Avenue and saw § 87(2)(b) lying on the ground in front of the Auto Zone. He was on his stomach in handcuffs and his face was bloody. § 87(2)(b) was wearing only one sneaker, a tank top and his other shirt was on the ground.

Other IAB Testimony

Although § 87(2)(b) and § 87(2)(b) provided statements to IAB regarding the incident, they did not witness § 87(2)(b) interact with the police § 87(2)(g)

Attempts to Contact Civilians

A phone number and an address for § 87(2)(b) was found via a Lexis-Nexis search. Five calls were made to § 87(2)(b) between October 17, 2012 and January 23, 2013. Each time, the call could not be completed because the phone number was disconnected. Letters were sent to § 87(2)(b) on October 16, 2012 and October 19, 2012. These letters have not been returned by the United States Postal Service. To date, § 87(2)(b) has not responded to these contact attempts. § 87(2)(b) and “§ 87(2)(b)” could not be contacted because their full names and contact information remain unknown.

NYPD Statements:

Witness Officer: SERGEANT ANTHONY BAGAROZZA

- *Sergeant Bagarozza is a white man who was § 87(2)(b) old at the time of the incident. He is 6’1” tall, weighs 205 pounds and has black hair and brown eyes.*
- *At the time of his interview, he was assigned to IAB. On July 11, 2010, he was assigned to the 69th Precinct. He worked from 2:50 p.m. until 11:47 p.m. He was assigned as the patrol supervisor and worked with PO Michael Griffith in uniform and marked RMP 4546.*

Memo Book

At 9:45 p.m. on July 11, 2010, Sergeant Bagarozza was backing sector 69A in regards to a disorderly group travelling eastbound on Flatlands Avenue. At 9:55 p.m., the large group became loud, belligerent and rowdy near the Breukelen Houses. One person was arrested by sector 69A, PO Robert Kropp and PO Marco Rosales, at East 108th Street and Flatlands Avenue.

At 10:15 p.m., additional units were requested to Williams Avenue and Flatlands Avenue for 15 to 20 black males who were refusing to leave the location. At 10:22 p.m., shots were fired at Williams Avenue and Flatlands Avenue. At 10:30 p.m., Sergeant Bagarozza requested 75th Precinct units to the vicinity of Flatlands Avenue and Louisiana Avenue. At 10:32 p.m., a call for assistance was made by 75th Precinct unit RMP 1956. At 10:32 p.m., Sergeant Bagarozza verified an arrest at Flatlands Avenue and Louisiana Avenue, made by 69 sector D PO Kurt Fitzcharles and PO Kevin Savary. Sergeant Bagarozza positively identified the perpetrator. At 10:43 p.m., Sergeant Bagarozza verified an arrest made by PO Matthew Menze of the 75th Precinct and positively identified the perpetrator. At 10:45 p.m., sector 69D requested Sergeant Bagarozza to the northeast corner of Cozine Avenue and Pennsylvania Avenue at the request of the 75th Precinct Lieutenant Kenneth Winters.

At 10:55 p.m., sector 69C officer PO Jenda Wu requested an ambulance to Cozine Avenue and Pennsylvania Avenue for injured perpetrator who had injuries to his head. At 11:07 p.m., the ambulance responded to the location and at 11:15 p.m. the ambulance removed § 87(2)(b) to § 87(2)(b) with PO Wu escorting the EMTs in the ambulance. The arresting officer was PO Smith of the 75th Precinct and the apprehending officer was PO Napolitano of the 75th Precinct. Sergeant Anthony Gulotta of the 75th Precinct and Lieutenant Winters, who was the 75th Precinct special operations lieutenant, were present at the scene. At 11:40 p.m., Sergeant Bagarozza arrived at § 87(2)(b) in regards to § 87(2)(b) and notified the commanding officer of the 69th Precinct, Deputy Inspector Miltiades Marmara of the incident. At 12:02 a.m. on July 12, 2010, Sergeant Bagarozza notified IAB and was given IAB log #10-34873. At 12:40 a.m. Sergeant Bagarozza returned to the 69th Precinct and at 7:30 a.m. PO Fitzcharles re-interviewed PO Smith in regards to the arrest of § 87(2)(b) as PO Fitzcharles was the assigned officer and PO Smith was the arresting officer (encl. 80 – 86).

CCRB Testimony

Sergeant Anthony Bagarozza was interviewed at the CCRB on January 17, 2013 (encl. 87 – 89). On July 11, 2010, prior to going out on patrol, he was informed by his platoon commander, whose identity he could not recall, § 87(2)(e)

Although this gathering of people was legal, as people can gather at the Pier, Sergeant Bagarozza knew that they did not have a permit to be there.

Sergeant Bagarozza and PO Griffith went to the Canarsie Pier at about 9:45 p.m. to back sector 69A in regards to a large disorderly group. When he arrived, he saw a large disorderly group of approximately 500 people. In addition to himself and 69A, there was another sector at the scene, although Sergeant Bagarozza could not recall which sector this was. Parks Department officers at the scene put on their lights and sirens and calmly told everyone to leave because the group of people was being loud, belligerent and rowdy. There were no issues with the crowd's response and they left.

As the group left the Canarsie Pier, Sergeant Bagarozza and the other sectors followed the crowd of several hundred people in their RMPs as they traveled down Flatlands Avenue. The officers were watching them to make sure that they did not do anything they were not supposed to do, such as harass people or loot stores, because it was a rather large crowd.

As the crowd approached Flatlands Avenue and Williams Avenue, PO Griffith and Sergeant Bagarozza observed about 20 males from the large crowd get into a verbal dispute with about four individuals who were across the street on the side of the Breukelen Houses. Sergeant Bagarozza described this group of 20 as young males in their teens who were black, as well as some Hispanic males. He did not recall § 87(2)(b) being a part of this group but recalled that § 87(2)(b) and § 87(2)(b) were. This dispute between the two groups was verbal and did not get physical. While listening to the argument, he heard someone say, "I'm gonna shoot you motherfuckers." Sergeant Bagarozza did not see who said this.

While that argument was going on, the rest of the crowd was out of control. A couple of people jumped over the hood of his RMP. There were people running in traffic and back and forth across the street who would not listen to his commands over the PA system to stay out of the street. Sergeant Bagarozza did not remember § 87(2)(b) being one of the people who was running in and out of traffic. He did not recall any unit on scene at this point other than sector 69A.

As the verbal disagreement continued, Sergeant Bagarozza saw about 20 children, with their parents, playing in front of the building. Sergeant Bagarozza exited the vehicle and asked the

parents to take their children inside in case anything bad happened. As Sergeant Bagarozza spoke to the parents, he heard approximately ten gunshots fired directly behind him. Sergeant Bagarozza turned around and saw the group of 20 males and the group of four males fleeing from the scene. There was no indication of who fired the shots, but Sergeant Bagarozza said that it was definitely someone in the larger group. No one appeared injured at the time and no firearms or ballistics were ever recovered. Sergeant Bagarozza did not know if sector 69A was still in the vicinity at the time.

After turning around, Sergeant Bagarozza drew his firearm and chased the 20 males on foot. At the same time, he went over the radio and requested assistance from the 75th Precinct because the border was nearby. He reported over the radio that he was chasing a large group of about 20 males and that the group was heading north on Flatlands Avenue. He did not provide any further description of the group. After Sergeant Bagarozza began the pursuit, he told them to stop running but they did not comply. The group split up into smaller groups and fled in different directions. Sergeant Bagarozza was not aware of whether the rest of the crowd from Canarsie Pier ran after the gunshots as he was focused on the larger group.

Sergeant Bagarozza chased the group for about two blocks. During the chase, PO Fitzcharles and PO Savary were able to apprehend § 87(2)(b) and § 87(2)(b) without incident. Sergeant Bagarozza believed that the first person apprehended was § 87(2)(b). The rest of the individuals ran into the confines of the 75th Precinct. During this time, he heard a 75th Precinct marked unit call for assistance at Pennsylvania Avenue and Cozine Avenue.

On the way back to the 69th Precinct to assist in the arrest processing, Sergeant Bagarozza was informed over radio by Lieutenant Winters that they had one more in custody. Lieutenant Winters also requested Sergeant Bagarozza come to Pennsylvania Avenue and Cozine Avenue. When he arrived there, he observed § 87(2)(b) handcuffed, laying on his side on the floor. There was blood on his face and vomit on the floor near his face. Sergeant Bagarozza “got on top of him” to observe his condition. § 87(2)(b) was not conscious and never regained consciousness while Sergeant Bagarozza was on scene. Sergeant Bagarozza did not recognize him as one of the members of the larger group.

Sergeant Bagarozza told PO Jenda Wu to call an ambulance, which he did, and he believed that it arrived within five minutes. Sergeant Bagarozza was informed that PO Napolitano had handcuffed § 87(2)(b) and that PO Smith and PO Menze were also involved. § 87(2)(b) was removed to § 87(2)(b) via ambulance. The extent of § 87(2)(b) injuries were unknown at the time, and Sergeant Bagarozza only thought that he had a broken nose. Sergeant Bagarozza later went to the hospital and the doctor explained that it was a more significant injury to his head.

Subject Officer: PO THOMAS NAPOLITANO

- *PO Napolitano is a white male who was § 87(2)(b) old at the time of the incident. He is 6’3” tall, weighs 248 pounds and has black hair and brown eyes.*
- *He is assigned to the 75th PCT. On July 11, 2010, he worked, in uniform, from 4 p.m. until 12 a.m. He was assigned to patrol sector J with PO Matthew Menze in marked RMP 2388.*

Memo Book

At 10:35 p.m. on July 11, 2010, PO Napolitano responded to a call for additional units by the 69th Precinct for Louisiana Avenue and Flatlands Avenue. At 10:37 p.m., PO Napolitano responded to a call for assistance at Pennsylvania Avenue and Cozine Avenue and apprehended one male on the northeast corner. At 11:20 p.m., PO Napolitano responded to the 69th Precinct on the authority of 69th Precinct Sergeant Bagarozza; Lieutenant Kenneth Winters was notified (encl. 62 – 65).

IAB Testimony

PO Napolitano was interviewed by IAB on February 29, 2011 (encl. 66 – 67). This statement was consistent with his CCRB interview, except where noted below.

CCRB Testimony

PO Napolitano was interviewed at the CCRB on January 17, 2013 (encl. 68 – 70). On July 11, 2010, PO Napolitano and PO Menze were on patrol when they heard 69th Precinct Sergeant Bagarozza call for additional units in regards to shots fired. No description was provided at the time of this call, just that there was a shooting and there was a large group fleeing the location. PO Napolitano and PO Menze, who was the operator, responded to the location of the call. PO Napolitano was not sure how long it took him to respond but guessed that it was relatively quick.

When they arrived at the location, PO Napolitano saw an unknown number of officers and approximately two RMPs at the location. PO Napolitano and PO Menze did not get out of the car and PO Napolitano heard, through the car window, another unknown officer say that a large group was involved in a shooting and had just fled the location towards Cozine Avenue. PO Napolitano heard that the group was about 10 – 15 people in size but no description was provided. PO Napolitano saw only officers on the street when he arrived at that location.

Once PO Menze and PO Napolitano received the information they started canvassing for the group because they could not have gotten far. They made a quick left and canvassed along Williams Avenue towards Cozine Avenue. About a minute into their canvass, they heard a call over the radio from 75th Precinct Impact Auto saying that they were chasing three males running eastbound on Cozine Avenue from another street that PO Napolitano could not recall. No other information was provided. In his statement to IAB, PO Napolitano said that a description for the three males had been provided during this call for assistance. PO Napolitano and PO Menze were about two or three blocks away from the location on Williams Avenue, so they started going east to get to the location of the call.

While going eastbound on Cozine Avenue, they saw two officers chasing three civilians on foot. PO Napolitano could not recall what cross street they saw this chase first occurring. One of the officers was PO Smith and PO Napolitano could not recall the other officer's identity. One of the males, § 87(2)(b) was wearing a bright white shirt. The other two males were wearing darker clothing. The three males were going eastbound on Cozine Avenue. PO Smith and the other officer about two or three car lengths away. PO Napolitano did not see any indication that any of the three males had a gun. PO Napolitano suspected them of gun possession or reckless endangerment for shooting in the air because that is how the original call came over from the sergeant. PO Napolitano added that at the time, "We [did not] know who was involved but they were running from the scene."

PO Napolitano and PO Menze, while still in their vehicle, joined the pursuit. Just as the three civilians hit Pennsylvania Avenue, two of them went northbound on Pennsylvania Avenue while

§ 87(2)(b) continued eastbound on Cozine Avenue, crossing Pennsylvania Avenue. § 87(2)(b) was sprinting at full speed across Pennsylvania Avenue, which is a main highway. § 87(2)(b) affected traffic due to his crossing and PO Napolitano heard horns and tires as he crossed. PO Menze stopped their RMP right before the southbound traffic lane on Pennsylvania Avenue and let PO Napolitano out of the vehicle. PO Menze continued in his vehicle after the two males who went northbound on Pennsylvania Avenue while PO Napolitano began chasing § 87(2)(b). PO Napolitano began sprinting at full speed after § 87(2)(b) and gave him two or three commands, saying “Police stop,” and “Police don’t move.” PO Napolitano followed § 87(2)(b)’s path and was about three or four car lengths behind § 87(2)(b) throughout the chase. Once § 87(2)(b) crossed Pennsylvania Avenue, he continued running on the sidewalk on Cozine Avenue.

As PO Napolitano ran at full speed to catch § 87(2)(b), § 87(2)(b) suddenly stopped on Cozine Avenue on the sidewalk between New Jersey and Pennsylvania Avenue. PO Napolitano had just given § 87(2)(b) an order to stop when he stopped. When § 87(2)(b) stopped, he “turned on [PO Napolitano].” § 87(2)(b)’s hands were “up in front of him” and he was “almost in a fighting stance.” PO Napolitano further described § 87(2)(b)’s hands as being closed in a fist while his arms were bent in front of him and his shoulders were slightly hunched forward.

§ 87(2)(b) did not have time to say anything or make any motions. PO Napolitano, who was still running at full speed with his head down, could not stop and realized that he was going to collide with § 87(2)(b) so he hunched down and put his right forearm up in front of his face as a natural instinct to protect his face. PO Napolitano knew there was no alternative but for them to collide because they were too close and PO Napolitano was running too fast and § 87(2)(b) stopped so short. When they collided, PO Napolitano’s forearm made contact with § 87(2)(b)’s face and § 87(2)(b) fell and his head hit the concrete. In his statement to IAB, when PO Napolitano was asked whether § 87(2)(b) was in a fighting stance when he turned around, PO Napolitano responded that he did not recall because it happened too quickly and that he was not sure and just put his hands up to protect himself from impact.

PO Napolitano stumbled, caught his balance and came back to handcuff § 87(2)(b). At that point another officer, who PO Napolitano did not know, assisted PO Napolitano in getting the handcuffs on § 87(2)(b). § 87(2)(b) who was on his stomach, was flailing his arms and pulling his arms away from the officers. § 87(2)(b) was not say anything. After seconds, PO Napolitano and the other officer handcuffed § 87(2)(b). The only additional force used against § 87(2)(b) was trying to get his hands in handcuffs.

Shortly after § 87(2)(b) was handcuffed, PO Napolitano noticed that § 87(2)(b) had a bloody nose. § 87(2)(b) was still on his stomach and there was blood on the concrete. PO Napolitano was not sure if § 87(2)(b) vomited and as far as he could tell § 87(2)(b) never lost consciousness. PO Napolitano said PO Smith may have come to the scene after the arrest, but he was not sure. While PO Napolitano was handcuffing § 87(2)(b) PO Menze was down by Wortman Avenue where he caught the other two individuals. PO Napolitano believed that he called for an ambulance. He then waited for Sergeant Bagarozza to come and verify the arrest. The sergeant went to Wortman Avenue first to verify PO Menze’s arrests and then came to him. PO Napolitano then switched cuffs with a 69th Precinct officer and left the scene as the ambulance arrived. Lieutenant Winters responded to the scene after the ambulance had taken § 87(2)(b) away. PO Napolitano did not remember seeing any plainclothes officers at the scene.

Subject Officer: PO CRAIG SMITH

- *PO Smith is a white male who was § 87(2)(b) old at the time of the incident. He is 6'3" tall, weighs 195 pounds and has brown hair and blue eyes.*
- *He is assigned to the 75th PCT. On July 11, 2010, he worked an Impact Overtime Shift from 7:35 p.m. to 4:05 a.m. He worked in uniform with PO Troy Spencer and PO James Titus in RMP 1959.*

Memo Book

At 10:25 p.m. on July 11, 2010, PO Smith responded to a call for additional units made by a 69th Precinct sergeant for Williams Avenue and Flatlands Avenue in regards to shots fired. At 10:28 p.m., PO Smith arrived at the location and canvassed for possible perpetrators. At 10:32 p.m., he observed possible perpetrators running from the location. At 12:33 a.m., three people were placed under arrest by the 69th Precinct (encl. 72 – 75).

IAB Testimony

PO Smith provided a statement to IAB on February 27, 2011 (encl. 76 – 77). This statement was consistent with his CCRB testimony, except where noted below.

CCRB Testimony

PO Craig Smith was interviewed at the CCRB on January 22, 2013 (encl. 78 – 79). While on patrol, PO Smith, who was sitting in the back seat, PO Titus, who was the operator, and PO Spencer heard a call over the radio from Central of shots fired at Williams Avenue and Flatlands Avenue. It was put over by Central, but originally came from a 69th Precinct sergeant, but PO Smith was not sure who. A description and direction of flight was provided, but PO Smith did not recall the details. He did not remember if clothing or a number of people was included with the description. When the call was put over, they were already in the vicinity of Williams Avenue and Flatlands Avenue. They did not go to the intersection and did not speak to any officers prior to starting their canvass for the perpetrators.

On Georgia Avenue and a cross street PO Smith could not recall, PO Smith saw three males who matched the description running northbound. In his statement to IAB he stated that there were six males who matched the description. PO Smith suspected them of being involved in the shots fired call. He did not recall what they were wearing. He did not see any indication that they were armed or had any bulges on their persons. He did not recall if they were carrying anything as they ran. PO Smith exited the RMP and pursued the three males on foot. Although PO Smith indicated that it was PO Titus's decision to pursue the three males, PO Smith also stated that there was no discussion between the officers prior to him exiting the vehicle to pursue the males on foot.

While PO Smith engaged in a foot pursuit by himself with the males, he lost sight of the RMP and did not recall where PO Spencer and PO Titus went. PO Smith put over the radio a call with the direction of flight, but he did not recall when he put it over. After chasing the males for about three blocks, the three males split up. PO Smith could not recall the exact intersection where they split up. PO Smith continued after an individual, identified by the investigation as § 87(2)(b) but § 87(2)(b) crossed over traffic and PO Smith lost him.

§ 87(2)(b) was apprehended by PO Napolitano, although PO Smith did not recall the exact circumstances of the arrest. PO Napolitano did not join in the foot pursuit of § 87(2)(b) and PO Smith did not know where PO Napolitano came from. When PO Napolitano apprehended § 87(2)(b)

§ 87(2)(b) PO Smith was three lanes of traffic away from them. PO Smith “remember[ed] § 87(2)(b) running right towards PO Napolitano.” PO Smith did not assist in handcuffing § 87(2)(b) and did not know who did. PO Napolitano’s partner was on the scene in his RMP. In his statement to IAB, PO Smith stated that he observed § 87(2)(b) run directly into PO Napolitano and that they were engaged in a brief physical struggle, in which § 87(2)(b) fell to the ground and hit his head on the ground, although he did not see how § 87(2)(b) fell.

When PO Smith crossed the street, § 87(2)(b) was on the ground and apprehended. PO Smith did not recall if § 87(2)(b) was in handcuffs at that point. § 87(2)(b) needed EMS and had an injury to his head from which he was bleeding. § 87(2)(b) was saying something, although PO Smith did not know what he was saying. § 87(2)(b) was conscious but needed medical attention.

Witness Officer: PO MATTHEW MENZE

- *PO Menze is a white male who was § 87(2)(b) old at the time of the incident. He is 5’10” tall, weighs 235 pounds and has brown hair and blue eyes.*
- *He is currently assigned to the 105th Precinct with the rank of sergeant. On July 11, 2010, he was assigned to the 75th Precinct with the rank of police officer. He worked, in uniform, from 3 p.m. until 11:35 p.m. with PO Napolitano. They were assigned to patrol sector J in marked RMP 2388.*

Memo Book

At 10:35 p.m., PO Menze responded to a call for additional units by the 69th Precinct at Louisiana Avenue and Flatlands Avenue in regards to shots fired. At 10:37 p.m., he responded to a call for additional units at Pennsylvania Avenue and Cozine Avenue, where he apprehended one male on the northwest corner. The male was identified by Sergeant Bagarozza of the 69th Precinct and was taken into custody by the 69th Precinct under Sergeant Bagarozza’s authority. At 11:20 p.m. PO Menze responded to the 69th Precinct on the authority of Sergeant Bagarozza in regards to the apprehension of the perpetrator; Lieutenant Winters was notified (encl. 91 – 93).

IAB Testimony

PO Menze was interviewed by IAB on February 15, 2011 (encl. 94 – 95). His statement was consistent with his CCRB testimony, except where noted below.

CCRB Testimony

PO Matthew Menze was interviewed at the CCRB on January 28, 2013 (encl. 96 – 97). At approximately 10:35 p.m., Central directed PO Menze and PO Napolitano to respond to a call for additional units that the 69th Precinct was calling at the intersection of Louisiana and Flatlands Avenue for shots fired. No description was provided at the time and it was just a call to go to the location. PO Menze and PO Napolitano were pretty far away when the call came over, although PO Menze did not recall how long it took him to respond. When they arrived, there were already approximately five to seven marked RMPs at the scene. PO Menze could see that from a distance and did not go to the intersection of Louisiana and Flatlands because he assumed it was all under control there. Instead, PO Menze went around the block to see if there was any other description and to help out with the canvass.

PO Menze saw a housing car from PSA 1 stopped near the Breukelen Houses and pulled up next to him to see if he had any further information. PO Menze asked the PSA 1 officer, whose

identity he did not know, what was going on and if there were any outstanding perpetrators. The PSA 1 officer told him that the call was in regards to a shots fired job somewhere in the confines of the 69th Precinct. He did not provide him with a description of the perpetrators.

About a minute into his conversation with the PSA 1 officer, PO Menze and PO Napolitano received a radio call over their frequency regarding a call for additional units for a foot pursuit on Cozine Avenue running eastbound towards Pennsylvania Avenue. The call was made by an Impact auto. PO Menze did not remember the names of the officers who called for additional units but knew that one of them was eventually assigned the arrest. PO Menze and PO Napolitano were only a block away from Cozine Avenue, and went to the location. It took them about 30 seconds to get there.

Upon arriving, PO Menze saw a marked RMP parked on Cozine Avenue just west of the Pennsylvania Avenue intersection. All of the officers were out of the RMP. There were at least three police officers and two males running in the street eastbound on Cozine Avenue. There were also some uninvolved people on the corner near two bus stops. When PO Menze saw the two males running, he did not know if they were armed but he knew that they were not complying with the officers and were fleeing them. The other officers were a good distance behind the two perpetrators.

PO Menze and PO Napolitano drove past the parked RMP and then one male went northbound towards the northwest side of Pennsylvania Avenue and Cozine Avenue while the other male continued eastbound on Cozine Avenue. There were responding RMPs in the road but PO Menze did not recall seeing any civilian cars on the road. PO Napolitano exited the vehicle approximately halfway through the intersection of Pennsylvania and Cozine and continued after the male who fled eastbound on Cozine Avenue. PO Menze could not describe this male because he pursued another male who fled northbound on Pennsylvania Avenue. PO Menze did not see what happened between PO Napolitano and the male who fled on Cozine Avenue.

PO Menze drove a little further on Pennsylvania Avenue before exiting the car and apprehending the male, who he described as either a black or dark-skinned Hispanic male in a white t-shirt (the male was holding his shirt). No other officer followed him or assisted him in apprehending the perpetrator. After PO Menze transferred his arrest to the 69th Precinct, he directed the sergeant and other officers to the other side of the street because he knew that PO Napolitano had been chasing someone in that direction. PO Menze retrieved his RMP, went around the block and when he arrived, PO Napolitano was exchanging handcuffs with someone from the 69th Precinct. § 87(2)(b) was laying prone on the ground in handcuffs. PO Menze did not get close to § 87(2)(b). There were about 25 officers on the scene, including Lieutenant Winters, the uniformed impact lieutenant for the night. There were plainclothes officers on the scene, but PO Menze did not know who they were or what command they were from.

Officers Not Interviewed

PO Griffith, PO Titus, PO Spencer, Lieutenant Winters, Sergeant Gulotta, and PO Wu were not interviewed § 87(2)(g)

Medical Records (encl. 106 – 125)

Ambulance call report § 87(2)(b) was generated by station 39, who arrived on scene at 10:55 p.m. It indicated that § 87(2)(b) was found prone on the ground while under arrest. He was responsive to painful stimuli and vomiting. He was immobilized and placed on oxygen. He was bleeding from his nose, ear, cheek and mouth. § 87(2)(b) was combative. He was

transported to the hospital without incident. The police on scene stated, “He’s OK.” The presumptive diagnosis was head trauma secondary to assault.

Ambulance call report § 87(2)(b) was generated by station 58, who arrived on scene at 10:59 p.m. It indicated that they found § 87(2)(b) inside ambulance and unresponsive. Other EMTs on scene indicated that he had suffered head trauma. It also noted, “civ [states] he was beaten.” § 87(2)(b) was bleeding from his nose, mouth and possibly ear and had a small gash on the right side of cheek. It was noted that § 87(2)(b) was also vomiting. He was transported to the emergency room with no incidents, although the EMTs were “unable to get a line” because § 87(2)(b) was combative.

The § 87(2)(b) medical records indicated that § 87(2)(b) was brought in secondary to an assault, allegedly by the police, and suffered head trauma. § 87(2)(b) was unresponsive and had one episode of vomiting. § 87(2)(b) was unconscious but occasionally awoke and moaned with no coherent speech. He was severely lethargic and could only be aroused by painful stimuli. He was bleeding from his right ear and had an abrasion to his nose. A CT scan noted that he had a linear fracture in the right temporal/parietal bone and noted areas of cortical hemorrhagic contusions with edema in the left frontal/temporal lobes with small extra-axial hematoma along the left frontal convexity. The primary diagnosis of his condition was a closed fracture to his skull with subarachnoid/subdural/extradural hemorrhage. The secondary diagnosis was cerebral edema, compression of the brain and acute respiratory failure.

NYPD Documents

SPRINT Reports (encl. 129 – 137)

SPRINT Report N14774, labeled as a “10-13” uniformed officer needs assistance, revealed the following: At 9:52 p.m., a male caller stated that about 40 to 50 people, possibly teens are running down the block on Flatlands Avenue towards 108th Street and the Breukelen Houses and that the police were chasing them. The male caller did not see any weapons or injuries. At 9:54 p.m., 69th Precinct unit 9774 indicated that it was just a large group of kids. At 10:30 p.m., a 69th Precinct sergeant, identified by the investigation as Sergeant Bagarozza, requested 75th Precinct units to Flatlands Avenue and Louisiana Avenue in regards to shots fired. At 10:31 p.m., Sergeant Bagarozza indicated that the perpetrators were a group of 15 to 20 black males and that no shots were fired at or by officers. At 10:43 p.m., sector A had one arrest at Flatlands Avenue and Cozine Avenue. At 10:52 p.m., sector D had one arrest. At 10:55 p.m., sector C requested EMS to Cozine Avenue and Pennsylvania Avenue for an AIDED with lacerations to the face from a possible assault.

SPRINT Report § 87(2)(b) labeled as a “10-10” possible shots fired, revealed the following: At 10:25 p.m., a male caller, § 87(2)(b), reported that shots were fired at Williams Avenue and Flatlands Avenue. He stated that the police were already at the location. He did not know who the shooter was and stated that there was a group of kids running towards Starrett City and that the police were going after them. At 10:34 p.m., sector D had one arrest at Louisiana Avenue and Flatlands Avenue.

The recording for SPRINT Report N15359 revealed the following: At 10:32 p.m., a male officer identifying himself as RMP 1959 indicated that he was eastbound on Cozine Avenue in regards to the report of shots fired. The officer who identified himself as RMP 1959 subsequently asked “Craig, where are you?” at least twice during the recording. A male officer identifying himself as the 75th Precinct anti-crime unit indicated that they had the perpetrator stopped at Pennsylvania Avenue and Cozine Avenue. About a minute and a half into the recording the 75th Precinct anti-crime unit indicated that no further units are needed. Shortly afterwards an unknown

officer asked, "Tommy you there?" and a male officer responded, "Manny, I'm good." The 75th Precinct anti-crime unit was subsequently raised and indicated that they were with RMP 1959 at Pennsylvania and Cozine and reiterated that absolutely no further units are required. Shortly afterwards a male officer identifying himself as the 75th Precinct Impact Lieutenant, identified by the investigation as Lieutenant Winters, indicated he was heading over to the scene. About a minute later the anti-crime sergeant indicated that he arrived at the location. At 12:33 a.m., the 75th Precinct Impact Lieutenant indicated that three arrests were made by the 69th Precinct.

Unusual Occurrence Report (encl. 126 – 128)

The Unusual Occurrence Report, prepared by Captain Anthony Carter, noted the following: On July 11, 2010, at approximately 9:50 p.m., Sergeant Bagarozza and PO Griffith were on patrol when they observed a group of approximately 20 males engaged in a verbal dispute with two males. Both groups were told to disperse numerous times but all requests were ignored. When the groups reached the corner of Williams Avenue and Flatlands Avenue, the argument escalated and it appeared that violence was imminent. Sergeant Bagarozza requested additional units to his location and exited his vehicle to attempt to disperse the groups. Sergeant Bagarozza observed several young children with two adults in front of § 87(2)(b), close to where the disorderly groups were about to engage, and instructed the adults to remove the children inside because the two groups were becoming increasingly hostile. While speaking with the adults, Sergeant Bagarozza heard approximately ten gun shots in the immediate vicinity of where the disorderly groups were. A foot pursuit was initiated and § 87(2)(b) and § 87(2)(b) were arrested within a few blocks from where the shots were fired. ESU conducted two ballistics searches with negative results. § 87(2)(b) suffered a significant injury to his head and his status was critical. It was not known in what manner the injury was sustained at the time of the report.

Arrest Report (encl. 138 – 140)

The arrest report for § 87(2)(b) which was entered by PO Fitzcharles, indicated that he was arrested on the northeast corner of Cozine Avenue and Pennsylvania Avenue at 10:37 p.m. on July 11, 2010 for § 87(2)(a) 160.50

§ 87(2)(a) 160.50
§ 87(2)(a) 160.50
§ 87(2)(a) 160.50
§ 87(2)(a) 160.50
§ 87(2)(a) 160.50
§ 87(2)(a) 160.50
Physical force was used to "restrain/control/remove" § 87(2)(b)

75th Precinct Roll Call (encl. 156 – 168)

According to the July 11, 2010 tour 3 roll call and July 12, 2010 tour 1 roll call, no officers in the 75th Precinct were assigned to anti-crime.

Arrests for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) and his mother § 87(2)(b), filed a Notice of Claim with the City of New York on § 87(2)(b) claiming assault, battery, use of excessive force, false arrest, false imprisonment, recklessness and gross negligence and is seeking an unspecified sum as redress (encl. 169 – 177). A 50-H hearing was held on § 87(2)(b) and it is currently an active case. On June 25, 2012, § 87(2)(b)'s attorney, § 87(2)(b), stated that she had received my request for the 50-H transcript and that she would forward it to me once she got a copy of it herself and had time to review it. To date, § 87(2)(b) has not forwarded the 50-H transcript to the CCRB.

Civilian's Criminal Conviction History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 14).

Subject Officer(s) CCRB History

- PO Smith has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 12).
- PO Napolitano has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 13).

Conclusion

Identification of Subject Officers

PO Smith admitted exiting his RMP to chase § 87(2)(b) and the two other men he suspected of being involved in the call regarding shots fired. Although he indicated that it was PO Titus's decision to pursue the three men, PO Smith also stated that there was no discussion between the officers prior to him exiting the vehicle to pursue the § 87(2)(b) and the men on foot. Additionally, once the three men split up, PO Smith continued in his pursuit of § 87(2)(b) § 87(2)(g)

PO Napolitano admitted apprehending § 87(2)(b) § 87(2)(g)

Investigative Findings and Recommendations

Allegations Not Pleaded

Although in his Notice of Claim, § 87(2)(b) alleged that officers were yelling "epithets" at § 87(2)(b) and the crowd, he did not reiterate this allegation during his in-person testimony with the CCRB. § 87(2)(g)

Allegation A – Abuse of Authority: PO Craig Smith stopped § 87(2)(b)

It is undisputed that PO Smith initiated the pursuit of § 87(2)(b) during the incident.

Sergeant Bagarozza stated that when he made the report of the shots fired over the radio at Williams Avenue and Flatlands Avenue, he did not provide any description of the perpetrators

and only reported that he was chasing a large group of 15 – 20 males northbound on Flatlands Avenue.

SPRINT Report N14774 indicated that the only information provided over the radio was that the perpetrators of the shots fired were 15 to 20 black males. No direction of flight or further description of the perpetrators was indicated in the report. SPRINT Report § 87(2)(b) called in by a civilian, provided that the people being chased by the police were running towards Starrett City, although there is no indication whether this was put over the radio to inform the responding units.

PO Smith stated that while conducting a canvass for the call regarding shots fired at Williams Avenue and Flatlands Avenue, he saw three males who fit the description of the perpetrators, including § 87(2)(b) running northbound at Georgia Avenue and a cross street he could not recall (which is approximately four blocks away from the original call). PO Smith suspected them of being involved in the shots fired call, although he did not see any indication that they were armed and did not see any bulges. PO Smith's memo book indicates that he responded to the call for additional units by Sergeant Bagarozza at 10:25 p.m., and observed the possible perpetrators at 10:32 p.m.

PO Napolitano and PO Menze testified that no description of the perpetrators was provided during the initial call regarding the shots fired, and that it was just a call to come to the location of the incident. When PO Napolitano first saw PO Smith chasing § 87(2)(b) he stated that he saw no indication that § 87(2)(b) or the other two individuals were armed. PO Menze did not know if the three males were armed when he first saw them. Both of their memo books indicated that the original call for the shots fired came over the radio at 10:35 p.m. and that the call for additional units made by PO Smith was made at 10:37 p.m.

§ 87(2)(b) and § 87(2)(b) noted that once the gun shots were heard, the entire crowd of people who had been coming from the Canarsie Pier dispersed in a panic. § 87(2)(b) noted that neither he nor § 87(2)(b) were involved in the argument with the § 87(2)(b), but that upon hearing gun shots they fled, with § 87(2)(b) running towards Starrett City.

Police pursuit of an individual significantly impedes the person's freedom of movement and must be justified by reasonable suspicion that a crime has been, is being, or is about to be committed. A defendant's flight in response to an approach by the police, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, may give rise to reasonable suspicion. People v. Buie, 2011 NY Slip Op 7857 (Second Department, 2011) (encl. 8 – 9). A defendant's flight, coupled with circumstances providing a founded suspicion of criminality, warrants a police pursuit. People v. Pitman, 2013 N.Y. App. Div. (First Department, 2013).

§ 87(2)(g)

Allegation B – Force: PO Thomas Napolitano used physical force against § 87(2)(b)

§ 87(2)(b)'s medical records indicated that when the ambulances responded, he was vomiting, bleeding from his nose, mouth and possibly ear, and had a small gash on the right side of his cheek. He was later diagnosed at § 87(2)(b) with a linear fracture in the right temporal/parietal bone. Additionally, § 87(2)(b) suffered areas of cortical hemorrhagic contusions with edema in the left frontal/temporal lobes with small extra-axial hematoma along the left frontal convexity. These injuries were suffered secondary to an assault.

§ 87(2)(b) told IAB that § 87(2)(b) was about seven steps ahead of PO Napolitano when he slowed down his pace and looked slightly over his left shoulder with his hands up by his torso, as if he was starting to surrender. § 87(2)(b) did not stop running and did not fully turn around when PO Napolitano raised his elbow and charged in, pushing his shoulder blade up like a football charge at § 87(2)(b). § 87(2)(b) was hit with the full force of PO Napolitano's right forearm to the right side of his head. There was no warning and § 87(2)(b)'s feet came off of the ground and he spun around, crashing on the right side of his head.

PO Napolitano noted that when he began chasing § 87(2)(b) he saw no indication that he was armed. As he ran at full speed to catch § 87(2)(b) who was three to four car lengths ahead of him throughout the chase, § 87(2)(b) suddenly stopped and "turned on [PO Napolitano]" right after PO Napolitano had given him an order to stop. PO Napolitano told the CCRB that § 87(2)(b) was "almost in a fighting stance" with his hands "up in front of him." Due to the speed at which he was running, the short distance between them, and the suddenness of § 87(2)(b)'s stopping, PO Napolitano realized that they were going to collide and hunched down with his right forearm in front of his face to protect himself and ran into § 87(2)(b). In his statement to IAB, PO Napolitano stated that he could not recall if § 87(2)(b) was in a fighting stance when he turned around and that it happened too quickly and he just put his hands up to protect himself from impact. PO Napolitano's forearm made contact with § 87(2)(b)'s face and § 87(2)(b) fell and hit his head on the concrete.

PO Smith did not recall the exact circumstances of the arrest of § 87(2)(b). From three lanes of traffic away, PO Smith testified to the CCRB that he "remember[ed] § 87(2)(b) running right towards PO Napolitano." To IAB, PO Smith stated that § 87(2)(b) ran directly into PO Napolitano and that they engaged in a brief struggle that caused § 87(2)(b) to fall to the ground.

§ 87(2)(g)

Officers are to use the minimum force necessary to effect an arrest. Patrol Guide Procedure 203-11 (encl. 10 – 11).

Although PO Napolitano stated that he had no choice but to collide with § 87(2)(b) due to the speed at which he was running and the suddenness of § 87(2)(b)'s stop, he also noted that he was three to four car lengths behind § 87(2)(b) throughout the entire chase. § 87(2)(b) placed the distance between them as seven steps. § 87(2)(g)

PO Napolitano characterized § 87(2)(b) as "turn[ing] on [him]" while "almost in a fighting stance" in his CCRB interview. However, in his IAB statement he could not recall if § 87(2)(b) was in a fighting stance when he stopped and turned around. § 87(2)(g)

It is undisputed that PO Napolitano's response to § 87(2)(b)'s stopping was to raise his right forearm in front of his face, causing his forearm to make contact with § 87(2)(b)'s face. § 87(2)(b) also noted that PO Napolitano pushed his shoulder up like a football charge and

[illegible]

Reviewer: _____
 Title/Signature Print Date